

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

LARSON'S, INC.,

Plaintiff,

v.

**MEMORANDUM OF LAW & ORDER
Civil File No. 06-3571 (MJD/RLE)**

STEVEN MCDONNELL,

Defendant.

David C. McLaughlin, Fluegel Helseth McLaughlin Anderson & Brutlag, Counsel
for Plaintiff.

Steven McDonnell, pro se.

On September 1, 2006, Defendant Steven McDonnell removed this action to this Court from the Traverse County District Court. On September 8, 2006, this Court remanded the matter for lack of subject matter jurisdiction because no federal claims were implicated in this matter and there was no diversity of citizenship between the Parties.

On October 23, 2006, McDonnell moved for reconsideration of the Court's remand order and for a temporary restraining order. [Docket Nos. 8, 11]

McDonnell asserts that diversity jurisdiction exists because Plaintiff Larson's, Inc., is a North Dakota corporation, not a Minnesota corporation, and the amount in controversy is more than \$75,000.00. However, the Court concludes that even if McDonnell's allegations are true, it still does not have subject matter jurisdiction over this case.

Under 28 U.S.C. § 1441(b), a defendant can remove a case based on diversity jurisdiction "only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." See also Horton v. Conklin, 431 F.3d 602, 604 (8th Cir. 2005) (holding that "violation of the forum defendant rule is a jurisdictional defect"). The party seeking removal has the burden of establishing federal subject matter jurisdiction, and the Court is "required to resolve all doubts about federal jurisdiction in favor of remand." In re Bus. Men's Assur. Co. of Am., 992 F.2d 181, 183 (8th Cir. 1993) (citation omitted).

In this case, there is no dispute that McDonnell is a citizen of Minnesota. Thus, the Court lacks jurisdiction over this matter and remands the case to state court.

IT IS HEREBY ORDERED:

This case is remanded to the Minnesota State District Court for Traverse County.

Dated: October 25, 2006

s / Michael J. Davis
Judge Michael J. Davis
United States District Court